**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF NEW YORK**

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**UNITED STATES OF AMERICA,**

**v.** **1:17-CR-271 (FJS)**

**HASSAN RAHEEM,**

**Defendant.**

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**APPEARANCES** **OF COUNSEL**

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**SCULLIN, Senior Judge**

**MEMORANDUM-DECISION AND ORDER**

## I. INTRODUCTION

In a three-count Indictment, a Federal Grand Jury charged Defendant with (1) "Possession of Firearm and Ammunition by Prohibited Person," in violation of 18 U.S.C. § 922(g)(1); (2) "Possession of Firearm in Furtherance of Drug Trafficking Crime," in violation of 18 U.S.C. § 924(c)(1)(A); and (3) "Possession with Intent to Distribute a Controlled Substance," in violation of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 841(b)(1)(C). *See* Dkt. No. 1. The Indictment also included a forfeiture allegation. *See id.*

Defendant moves, pursuant to Rule 12(b)(3)(C) of the Federal Rules of Criminal Procedure to suppress all physical evidence that police officers seized from the warrantless search of his backpack. *See* Dkt. No. 35-1 at 2. Defendant argues that law enforcement seized the physical evidence in violation of the Fourth Amendment to the United States Constitution for the following reasons:

> (1) the police/parole officers searched his backpack prior to obtaining a search warrant despite knowing it did not belong to the parolee whose hotel room was being inspected;
>
> (2) Jasmine Rodriguez, the parolee whose room was searched, notified police/parole officers that the backpack did not belong to her prior to it being searched and lacked either actual or apparent authority to consent to the search of Defendant's closed backpack;
>
> (3) Defendant was an overnight guest of Ms. Rodriguez, possessed a key to the locked hotel room and therefore had a reasonable expectation of privacy in his closed backpack in the room;
>
> (4) any statements that Defendant made to law enforcement or any Confidential Source working on behalf of law enforcement following his arrest constitute the fruit of the illegal search and arrest; and
>
> (5) any statements that Defendant made to law enforcement or any Confidential Source working on behalf of law enforcement violated his Sixth Amendment right to counsel.

*See id.*[1]

The Government opposes Defendant's motion and asserts that the Court should deny his motion for the following reasons: (1) Defendant has failed to establish standing to challenge the search of the black backpack; (2) as a parolee, Defendant consented to reasonable, warrantless

[1] Although Defendant lists statements that he made to law enforcement as something that he wants the Court to suppress, he does not discuss these statements in his memorandum of law. Rather, he addresses only the evidence uncovered as a result of the search of the backpack.

searches of his possessions and, thus, had no reasonable expectation of privacy in the backpack; and (3) the parole officers did not engage in deliberate, reckless or grossly negligent conduct that would justify suppression of the physical evidence recovered from the backpack. *See* Dkt. No. 37 at 6.

## II. DISCUSSION

### A. Defendant's standing to challenge the search of the backpack

"'A defendant seeking to suppress evidence must demonstrate by a preponderance of the evidence that he had a reasonable expectation of privacy in the location or items searched.'" *United States v. Molina-Rios,* No. 15-CR-122-FPG, 2016 WL 8669634, *1 (W.D.N.Y. Sept. 16, 2016) (quoting *United States v. Hemingway*, No. 05-CR-6108L, 2007 WL 499470, at *8 (W.D.N.Y. Feb. 13, 2007) (citing *Rakas v. Illinois*, 439 U.S. 128, 143 (1978))). "The burden of establishing such an expectation of privacy or 'standing' falls squarely upon the defendant." *Id.* (citing *Rawlings v. Kentucky*, 448 U.S. 98, 104 (1980)). "This burden to show standing 'is met only by sworn evidence, in the form of affidavit or testimony, from the defendant or someone with personal knowledge.'" *Id.* (quoting *United States v. Montoya-Eschevarria*, 892 F. Supp. 104, 106 (S.D.N.Y. 1995)). Furthermore, "the Court need not credit an attorney affirmation or argument in a brief about [who owned the backpack in question] because it is not admissible evidence." *United States v. Garcia*, No. 18 Cr. 178 (AT) , 2018 WL 3407707, *3 (S.D.N.Y. June 5, 2018).

As the Government noted in its opposition to Defendant's motion, Defendant did not submit an affidavit stating that the backpack belonged to him. Instead, he relied on the testimony that Senior Parole Officer ("SPO") Hotaling provided at Defendant's Final Parole Revocation Hearing in which he stated, "We went into [Ms. Rodriguez's] room. First thing I noticed was like a marijuana

grinder on the night stand. Ms. Rodriguez said, 'Well Champ is still around because that's his stuff, that's his bag.'" *See* Dkt. No. 35-1 at 4.

In addition, he relies on the memorandum of law that his counsel submitted on his behalf in support of his motion to suppress, in which his counsel repeatedly refers to the backpack as "Mr. Raheem's backpack." For example, he argues that the physical evidence in this case was seized in violation of the Fourth Amendment because, among other things, "the police/parole searched **Mr. Raheem's backpack** prior to obtaining a search warrant despite knowing it did not belong to the parolee whose hotel room was being inspected;" *see* Dkt. No. 35-1 at 2 (emphasis added); "Jasmine Rodriguez, the parolee whose room was searched, notified police/parole that the backpack did not belong to her prior to it being searched, and lacked either actual or apparent authority to consent to the search of **Mr. Raheem's closed backpack**;" *see id.* (emphasis added); and "Mr. Raheem was an overnight guest of Ms. Rodriguez, possessed a key to the locked hotel room, [and] therefore had a reasonable expectation of privacy in **his closed backpack** in the room, *see id.* (emphasis added).

Given the lack of any admissible evidence that would support a finding that Defendant had a possessory interest in the backpack, the Court finds that Defendant has failed to show by a preponderance of the evidence that he has standing to challenge the search of the backpack. The Court could deny Defendant's motion on this basis alone; however, in the interest of completeness, the Court will address the merits of his motion.[2]

[2] The Court notes that Defendant could have filed a reply to the Government's argument and, as part of that reply, submitted an affidavit of Defendant stating that the backpack was his. For whatever reason, he chose not to do so.

**B. Defendant's expectation of privacy in the backpack**

Assuming for sake of argument that Defendant has standing to challenge the search of the backpack, *i.e.,* that he has a possessory interest in that backpack, the next question is whether the search of that backpack was unreasonable. A person who moves to suppress "must show that he had an expectation of privacy in the invaded place and that the expectation was legitimate, one that society is prepared to recognize as reasonable." *United States v. Osorio*, 949 F.2d 38, 40 (2d Cir. 1991) (citing *Katz v. United States*, 389 U.S. 347, 361, 88 S. Ct. 507, 516-17, 19 L. Ed. 2d 576 (1967) (Harlan, J., concurring); *Rakas v. Illinois*, 439 U.S. at 140-41, 99 S. Ct. at 428-29; *United States v. Paulino*, 850 F.2d 93 (2d Cir. 1988)). "In evaluating [such] claims, the court generally considers whether the defendant had any property or possessory interest in the place searched or the items seized." *Osorio*, 949 F.2d at 40 (citations omitted).

In *Osorio*, the defendant conceded that he had no property or possessory interest in the items seized. However, he argued that, based on the Supreme Court's decision in *Minnesota v. Olson*, 495 U.S. 91 (1990), the warrantless nonconsensual search of the apartment in which he was staying as an overnight guest violated his Fourth Amendment rights. The Second Circuit agreed. The Second Circuit explained that, in *Olson*, the Supreme Court had held that an overnight guest has a "'legitimate expectation of privacy in his host's home.'" *Osorio*, 949 F.2d at 41 (quoting [*Olson*,] 110 S Ct. at 1689). The Supreme Court reasoned that "an overnight guest could depend on his host to protect his privacy interests and to provide a 'place where he and his possessions will not be disturbed by anyone but his host and those his host allows inside.'" *Id.* (quoting *Olson*, 110 S. Ct. at 1689). Thus, the Supreme Court found that "'Olson's status as an overnight guest is alone enough to show' that he had a legitimate expectation of privacy in the premises." *Id.* (quoting [*Olson*, 110 S.

Ct.] at 1688).

Although Defendant relies on *Osorio* to support his motion, *Osorio* is factually distinguishable from this case. First of all, unlike the situation in *Osorio*, where the apartment renter did **not** consent to the search of the apartment in which the defendant was staying, Ms. Rodriguez, as a condition of her parole, **had consented** to a warrantless search of her hotel room, which served as her residence. Second, unlike the defendant in *Osorio*, Defendant does not challenge the legality of the search of Ms. Rodriguez's hotel room in which he was allegedly an overnight guest. Rather, he challenges the legality of the search of the backpack in that, although the backpack was in Ms. Rodriguez's hotel room, she told the parole officers that the backpack was not hers; and, therefore, Defendant argues, she had no actual or apparent authority to consent to a search of that backpack.

In its opposition to Defendant's motion, the Government relies heavily on the argument that, as a parolee, Defendant had consented to the search of his property, including his backpack, as a condition of his parole. This argument, however, is problematic because, at the time that SPO Hotaling searched the backpack, he was not aware that Defendant was a parolee. In fact, he testified at Defendant's Final Parole Revocation Hearing that he was not aware of Defendant's status as a parolee until the day after the search. If SPO Hotaling had known that Defendant was a parolee, and, in addition, that a warrant had been issued for him because he was in violation of the terms of his parole, prior to his search of the backpack, then the Government's argument would inevitably prevail. However, that is not the case.

Furthermore, all the cases that the Government cites to support this argument are factually distinguishable in that the parole officers in those cases knew that the defendants were parolees.

This distinction is very important because, "'[u]nder New York law, the issue of whether a warrantless parole search is "unreasonable and thus prohibited by constitutional proscription . . . turn[s] on **whether the conduct of the parole officer was rationally and reasonably related to the performance of the parole officer's duty**."'" *Frego v. Kelsick*, No. 11-CV-5462 (SJF) (SIL), 2015 WL 332126, *2 (E.D.N.Y. Jan. 23, 2015) (emphasis added), *aff'd*, 690 F. App'x 706 (2d Cir. 2017) (quoting *Rivera v. Madan*, No. 10-civ-4136, 2013 WL 4860116, at *5 (S.D.N.Y. Sept. 12, 2013) (quoting *People v. Huntley*, 43 N.Y.2d 175, 181, 401 N.Y.S.2d 31, 371 N.E.2d 794 (1977))). "Therefore, 'so long as the conduct of the parole officer was rationally and reasonably related to the performance of the parole officer's duty, a warrantless search of the residence of a parolee is generally reasonable under the Fourth Amendment' (*United States v. Perkins*, No. 12-cr-6006L, 2013 WL 6145753, at *5 (W.D.N.Y. Nov. 21, 2013) (internal citations omitted)), even after the parolee is placed under arrest for the parole violation." *Frego*, 2015 WL 332126, at *2 (citing *Barner*, 666 F.3d at 85-86 (concluding that "the parole officers having placed [parolee] under arrest for a parole violation, earlier that same day, did not render the search [of his residence] unreasonable" because "[a] parole officer's duty to investigate violations of parole does not vanish the moment a defendant is taken into custody for a violation.")).

Since SPO Hotaling did not know that Defendant was a parolee at the time that he searched the backpack, it is difficult to argue that his search of the backpack was rationally and reasonably related to the performance of his duty as a parole officer. Had SPO Hotaling known about Defendant's status as a parolee, who was in violation of the conditions of his parole, this would be a different case; and, arguably, SPO Hotaling's search of the backpack would have been rationally

and reasonably related to the performance of his duty as a parole officer.[3]

In this case, even if the Court were to find that the search of the backpack violated Defendant's Fourth Amendment rights, the Court must still consider whether the exclusionary rule is applicable to this case. If, as the Government asserts, Defendant's status as a parolee, irrespective of whether SPO Hotaling knew of that status, means that, as a condition of his parole, he consented to his parole officer's search of his property, then the answer is easy; the search of the backpack did not violate his rights under the Fourth Amendment.

However, if the Court assumes for sake of argument that (1) the Government cannot rely on the fact that Defendant was a parolee because SPO Hotaling did not have that information at the time that he searched the backpack, (2) Defendant had a possessory interest in the subject backpack and, therefore, had a reasonable expectation of privacy in that backpack and its contents, and (3) Ms. Rodriguez did not have actual or apparent authority to consent to a search of a backpack which did not belong to her, then the Court must determine whether, under the circumstances of this case, the exclusionary rule applies to this arguably unreasonable search.

"To safeguard Fourth Amendment rights, the Supreme Court created 'an exclusionary rule that, when applicable, forbids the use of improperly obtained evidence at trial.'" *United States v. Bershchansky*, 788 F.3d 102, 112 (2d Cir. 2015) (quoting *Herring v. United States*, 555 U.S. 135, 139, 129 S. Ct. 695, 172 L. Ed. 2d 496 (2009)). The primary purpose of the exclusionary rule "'is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures.'" *Id.* (quoting *United States v. Calandra*, 414 U.S. 338,

[3] Of course, the reason that SPO Hotaling did not know that Defendant was a parolee prior to searching the backpack was due to the fact that Defendant provided SPO Hotaling with a fake driver's license that identified him as Dennis Sagini.

347, 194 S. Ct. 613, 38 L. Ed. 2d 561 (1974)). Furthermore, the exclusionary rule "specifically deters 'deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence.'" *Id.* (quoting *Herring*, 555 U.S. at 144, 129 S. Ct. 695).

In *Herring v. United States*, 555 U.S. 135 (2009), the Supreme Court stated that "[t]he fact that a Fourth Amendment violation occurred -- *i.e.*, that a search or arrest was unreasonable -- does not necessarily mean that the exclusionary rule applies. *Id.* at 140 (citing *Illinois v. Gates*, 462 U.S. 213, 223, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983)). "Indeed, exclusion 'has always been [the Court's] last resort, not [its] first impulse,' *Hudson v. Michigan*, 547 U.S. 586, 591, 126 S. Ct. 2159, 165 L. Ed. 2d 56 (2006), and [the Court's] precedents establish important principles that constrain application of the exclusionary rule." *Id.*

"First, the exclusionary rule is not an individual right and applies only where it '"result[s] in appreciable deterrence."'" *Id.* at 141 (quoting *Leon*, [468 U.S.] at 909, 104 S. Ct. 3405 (quoting *United States v. Janis*, 428 U.S. 433, 454, 96 S. Ct. 3021, 49 L. Ed. 2d 1046 (1976))). Moreover, the Court noted that it had "repeatedly rejected the argument that exclusion is a necessary consequence of a Fourth Amendment violation." *Id.* (citations omitted). Rather, the Court has "focused on the efficacy of the rule in deterring Fourth Amendment violations in the future." *Id.* (citations and footnote omitted).

In addition, the Court noted that "the benefits of deterrence must outweigh the costs." *Id.* (citation omitted). The Court stated that it had '"never suggested that the exclusionary rule must apply in every circumstance in which it might provide marginal deterrence.'" *Id.* (quotation omitted). Moreover, '"[t]o the extent that application of the exclusionary rule could provide some incremental deterrent, that possible benefit must be weighed against [its] substantial social costs.'"

*Id.* (quoting *Illinois v. Krull*, 480 U.S. 340, 352-353, 107 S. Ct. 1160, 94 L. Ed. 2d 364 (1987)). The Court explained that "[t]he principal cost of applying the rule is, of course, letting guilty and possibly dangerous defendants go free – something that 'offends basic concepts of the criminal justice system.'" *Id.* (quotation omitted). "'[T]he rule's costly toll upon truth-seeking and law enforcement objectives presents a high obstacle for those urging [its] application.'" *Id.* (quotation and other citations omitted).

The Court further explained that "[t]he extent to which the exclusionary rule is justified by these deterrence principles varies with the culpability of the law enforcement conduct." *Id.* at 143. The Court noted that, as it had said in *Leon*, "'an assessment of the flagrancy of the police misconduct constitutes an important step in the calculus' of applying the exclusionary rule." *Id.* (quoting [*Leon*], 468 U.S., at 911, 104 S. Ct. 3405). Moreover, the Court noted that, in *Krull*, it had "elaborated that 'evidence should be suppressed "only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment."'" *Id.* (quoting [*Krull*], 480 U.S., at 348-349, 107 S. Ct. 1160 (quoting *United States v. Peltier*, 422 U.S. 531, 542, 95 S. Ct. 2313, 45 L. Ed. 2d 374 (1975))).

The Court noted that "the abuses that gave rise to the exclusionary rule featured intentional conduct that was patently unconstitutional." *Id.* at 143. Thus, "[a]n error that arises from nonrecurring and attenuated negligence is . . . far removed from the core concerns that led [the Court] to adopt the rule in the first place." *Id.* at 144. "To trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. . . . [T]he exclusionary

rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence." *Id.*

Assuming for sake of argument that SPO Hotaling's search of the backpack violated Defendant's Fourth Amendment rights, the Court finds that, based on the factual record, the exclusionary rule is not applicable to this case and, therefore, denies Defendant's motion to suppress the evidence recovered from that backpack and any statements that he made after his arrest as a result of the evidence recovered from the backpack.

First of all, there is no dispute that SPO Hotaling had Ms. Rodriguez's consent to search her hotel room because she had agreed to such a search as a condition of her parole. There is also no dispute that she told SPO Hotaling that the backpack belonged to Champ, *i.e.*, Defendant, who was staying with her. According to SPO Hotaling's testimony at Defendant's Final Parole Revocation Hearing, the first thing he noticed when he entered Ms. Rodriguez' room was "a marijuana grinder on the night stand. Ms. Rodriguez said, 'Well, Champ is still around because that's his stuff, that's his bag.'" *See* Dkt. No. 35-4, Transcript of Richard Hotaling's Testimony, at 8:18-21. When asked who Champ was, Senior Parole Officer Hotaling responded, "Who we later learned to be Mr. Raheem." *See id.* at 8:23.

Next when asked whether he saw anything other than the grinder in the room, he stated:

> There was a grinder, there was a black backpack right in the chair next to that nightstand. There was a bed nightstand and a chair right next to the nightstand. She indicated that he was still here because that's his stuff. We asked her who, she said Champ. And then it was – it seemed like within a minute the individual here attempted to make entry into the room using a key that he had in his possession.

*See id.* at 9:10-17.

With regard to the individual who attempted to make entry into the room, SPO Hotaling

stated that Officer "Mullins then immediately went into the hallway and I followed Officer Mullins into the hallway. . . . Ran into – at the time, he identified himself as Mr. Sagini, but Mr. Raheem in the hallway. Then we engaged him in some conversation." *See id.* 10:15-21. He also stated that Defendant identified himself as "Dennis Sagini out of Florida. Florida's driver's license with the name Den[n]is Sagini on it." *See id.* at 10:23-25. When asked if he had identified who Mr. Sagini was, he responded, "It was his likeness on the Florida driver's license or ID card. I don't recall if it was a driver's license or just ID only. But the Florida ID that he provided to me was in the name Dennis Sagini." *See id.* at 12:2-5.

SPO Hotaling then testified that, after he asked "Mr. Sagini" for his identification, he "stepped outside because I had – the area of the motel that we were in was a basement floor. It had very poor cell signal right there so I stepped outside to the parking lot to call Colonie Police for some assistance in doing a file check on Mr. Sagini." *See id.* at 15-20. The Colonie Police ran the file check and it "came back with a negative special file or not on file." *See id.* at 12:22-23. He also asked them "to start a unit to our location because we had two individuals there. We had one parolee that we knew of at the time detained and we had seen at least some drug residue. So to get a unit there to assist us with what we were doing, which is normal practice for us to get police assistance . . . ." *See id.* at 12:23-13:3.

After this, SPO Hotaling went back into the room and talked to Officer Zaloga who told him that "Mr. Sagini was being – acting really nervous and being really inconsistent with his answers." *See id.* at 13:21-23. He continued,

> At that point, Officer Zaloga, Officer Hamilton, Officer Mullins remained in the hallway with Mr. Sagini at the time. I went into the room, talked to Ms. Rodriguez just for a minute or two. We started to do a search of the room. The bag – there was a black backpack,

> opened that up. There was inside of it another lining of like a black pouch, and when I grabbed that, I immediately felt what was recognizable to me as a handle of a handgun. At that point, we were not sure if we were dealing with a real gun or an imitation gun, which is also a violation of parole. She was already detained, Ms. Rodriguez, so I then just left that where it was and we went out into the hallway. I gave Officer Zaloga a signal that there was potentially a handgun in the room. And at that point we detained Mr. Sagini as well.

*See id.* at 14:2-16.

SPO Hotaling also testified that he did not find out the true identity of Mr. Sagini "until the following morning." *See id.* at 14:19. He stated that,

> [a]fter everything was processed at the police department that night, I left thinking that we had put the parole warrant on Ms. Rodriguez. Colonie advised that they were charging both of them with whatever contraband they had found in that room. So the next morning, it was through some e-mails and communication that I realized that we had a Nassau parole absconder as well. . . . [Colonie P.D.] determined his identification later on and e-mailed or they reached out to the Nassau office who then, in the morning, I see the e-mails from the Nassau parole office saying, "Hey, this parole absconder's in custody in Colonie. Can you help us with service of papers," and that kind of stuff.

*See id*. at 14:19-15:8.

When asked if he knew that Mr. Sagini/Mr. Raheem had a criminal record when he interviewed him outside Ms. Rodriguez motel room, he responded, "No." *See id.* at 15:24. He also testified that, to his knowledge, Ms. Rodriguez did not have permission to have Defendant in her room. *See id.* at 16:2.

SPO Hotaling testified further that, after he talked to Defendant in the hallway, he

> went back into the room at this point trying to determine whether or not we were dealing with a parole violation, which would be like a BB gun, or if we were dealing with something more. I opened up the zipper to the bottom pouch of the backpack and kind of shook it out

> onto the floor, and by looking at the muzzle of the firearm, it appeared to be a real firearm. At that point – from a parole standpoint, we shut down our searching and I called Colonie, said, "You might want to send a couple of other officers," and we kind of turned the scene over to them at that point.

*See id.* at 16:14-24.

Finally, SPO Hotaling testified that Ms. Rodriguez was present when the gun fell out of the bag and all she said was that "the bag was Champs, which is how she referred to Dennis or Hassan, and that she had no idea that the gun was there. . . . The only thing about the backpack that she mentioned that it was his. I have no idea how long it was there." *See id.* at 20:5-12.

Given these facts, it is clear that SPO Hotaling's search of the backpack did not rise to the level of a flagrant violation of Defendant's Fourth Amendment rights. SPO Hotaling was present in Ms. Rodriguez's room in his capacity as a parole officer to search her residence, to which she had consented, after she had failed to pass a drug test and because of his concern that she might have violated the condition of her parole in other ways. Furthermore, his suspicions that she might have been engaged in criminal conduct were supported by the fact that he saw a marijuana grinder in plain view. The backpack in question was located in the same room as the marijuana grinder. Moreover, it was reasonable for him **not** to credit Ms. Rodriguez's statement that the grinder and the backpack belonged to Defendant given that, earlier in the day, she had failed a drug test and there was a text message on her phone that she was afraid that she would not pass the test because she had not worn gloves when she had bagged stuff, which, he understood to mean, that she had bagged drugs. For all these reasons, the Court finds that SPO Hotaling's conduct was neither deliberate, reckless nor grossly negligent and that suppressing the evidence recovered as a result of this search would not deter Fourth Amendment violations in the future and that, even if suppression would

result in some incremental deterrence, the benefit of such minimal deterrence would not outweigh the substantial social costs of suppressing the evidence in this case. Accordingly, the Court denies Defendant's motion to suppress.

**C. Defendant's request for a hearing**

As the Government correctly points out in its opposition to Defendant's request for a hearing, Rule 12.1(e) of this District's Local Rules of Criminal Procedure provides that, "[i]f the government contests whether the Court should conduct a hearing, the defendant must accompany the motion with an affidavit, based upon personal knowledge, setting forth facts which, if proven true, would entitle the defendant to relief." L.R. Crim. P. 12.1(e). Even if Defendant was not aware, at the time that he filed this request, that the Government would oppose it, Defendant could have met the requirements of Rule 12.1(e) by filing a reply, which, pursuant to the Court's "Motion Rescheduling Notice," was due by April 30, 2019. Despite specifically being provided with this opportunity to respond to the Government's opposition to a hearing, Defendant, for whatever reason, chose not to do so.

Based on Defendant's failure to create a material issue of fact, as well as his failure to comply with the Local Rule 12.1(e), the Court denies his request for a suppression hearing.

## III. CONCLUSION

Having reviewed the entire file in this matter, the parties' submissions and the applicable law, and for the above-stated reasons, the Court hereby

**ORDERS** that Defendant's motion to suppress, *see* Dkt. No. 35, is **DENIED**.

**IT IS SO ORDERED.**

Dated: June 4, 2019
Syracuse, New York

Frederick J. Scullin, Jr.
Senior United States District Judge